

National Transportation Safety Board

§ 825.40

(3) A summary of the charges affirmed by the Commandant as proved;

(4) Fact findings by the Commandant disputed by the appellant;

(5) Specific statements of errors of laws asserted;

(6) Specific statements of any abuse of discretion asserted; and

(7) The relief requested.

(c) Objection based upon evidence of record need not be considered unless the appeal contains specific record citation to the pertinent evidence.

(d) When a brief has been filed by appellant under this section, the Coast Guard may, within 15 days of service of the brief on the Commandant, submit to the Board a reply brief.

(e) If a party who has filed a notice of appeal does not perfect the appeal by the timely filing of an appeal brief, the Board may dismiss the appeal on its own initiative or on motion of the Coast Guard.

§ 825.25 Oral argument.

(a) If any party desires to argue a case orally before the Board, he should request leave to make such argument in his brief filed pursuant to § 825.20.

(b) Oral argument before the Board will normally not be granted unless the Board finds good cause for such argument. If granted, the parties will be advised of the date.

§ 825.30 Action by the Board.

(a) On review by the Board, if no reversible error is found in the Commandant's decision on appeal, that decision will be affirmed.

(b) On review by the Board, if reversible error is found in the Commandant's decision on appeal, the Board may:

(1) Set aside the entire decision and dismiss the charges if it finds the error incurable; or

(2) Set aside the order, or conclusions, or findings of the Commandant and remand the case to him for further consideration if it finds the error curable.

(c) When a matter has been remanded to the Commandant under paragraph (b) of this section, the Commandant may act in accordance with the terms of the order of remand, or he may, as appropriate, further remand the matter

to the administrative law judge of the Coast Guard who heard the case, or to another administrative law judge of the Coast Guard, with appropriate directions.

§ 825.35 Action after remand.

When a case has been remanded under § 825.30, a party shall retain all rights of review under 46 CFR part 5 and this part, as applicable.

§ 825.40 Ex parte communications.

(a) As used in this section:

Board decisional employee means a Board Member or employee who is or who may reasonably be expected to be involved in the decisional process of the proceeding;

Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this part.

(b) The prohibition of paragraph (c) of this section shall apply from the time a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibition shall apply at the time of the acquisition of such knowledge.

(c) Except to the extent required for the disposition of ex parte matters as authorized by law:

(1) No interested person outside the Board shall make or knowingly cause to be made to any Board employee an ex parte communication relevant to the merits of the proceeding;

(2) No Board employee shall make or knowingly cause to be made to any interested person outside the Board an ex parte communication relevant to the merits of the proceeding.

Ex parte communications regarding solely matters of Board procedure or practice are not prohibited by this paragraph.

(d) A Board employee who receives or who makes or knowingly causes to be made a communication prohibited by paragraph (c) of this section, shall place on the public record of the proceeding:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communication; and

(3) All written responses, and memoranda stating the substance of all oral responses, to materials described in paragraphs (d) (1) and (2) of this section.

(e) Upon receipt of a communication knowingly made or caused to be made in violation of paragraph (c) of this section, the Board may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his or her interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(f) The Board may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the Board, consider a violation of this section sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.

(Authority: Sec. 4, Government in the Sunshine Act, Pub. L. 94–409, amending 5 U.S.C. 556 (d) and 5 U.S.C. 557; Independent Safety Board Act of 1974, Pub. L. 93–633, 88 Stat. 2166 (49 U.S.C. 1901 *et seq.*))

[42 FR 21614, Apr. 28, 1977]

PART 826—RULES IMPLEMENTING THE EQUAL ACCESS TO JUSTICE ACT OF 1980

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AUTHORITY: Section 203(a)(1) Pub. L. 99–80, 99 Stat. 186 (5 U.S.C. 504).

SOURCE: 46 FR 48209, Oct. 1, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 826.1 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (the Act), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (adversary adjudications) before the National Transportation Safety Board (Board). An eligible party may receive an award when it prevails over the Federal Aviation Administration (FAA), unless the Government agency's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that this Board will use to make them. As used hereinafter, the term "agency" applies to the FAA.

§ 826.2 When the Act applies.

The Act applies to any adversary adjudication identified in § 826.3 as covered under the Act.

[59 FR 30531, June 14, 1994]

§ 826.3 Proceedings covered.

(a) The Act applies to certain adversary adjudications conducted by the Board. These are adjudications under 5 U.S.C. 554 in which the position of the FAA is presented by an attorney or